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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/605,492	10/02/2003	Ralf Krueger	LWEP:119US	2491
24041	7590	10/04/2005	EXAMINER	
SIMPSON & SIMPSON, PLLC 5555 MAIN STREET WILLIAMSVILLE, NY 14221-5406			PRITCHETT, JOSHUA L	
			ART UNIT	PAPER NUMBER
			2872	

DATE MAILED: 10/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/605,492

Applicant(s)

KRUEGER, RALF

Examiner

Joshua L. Pritchett

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 September 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 8-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 8-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

This action is in response to Pre-Brief Conference Request filed September 1, 2005. All applicants arguments have been considered.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 2, 8, 9 and 11-13 are rejected under 35 U.S.C. 102(e) as being anticipated by Wilson (US 6,687,052).

Regarding claims 1 and 11-13, Wilson discloses an apparatus for implementing phase-contrast or modulation-contrast observation on microscopes with the aid of a modulator arranged in each pupil plane in the observation beam path (Fig. 1) and containing at least one layer modifying the phase or amplitude (col. 3 lines 26-30), and of a stop arranged in the illumination beam path wherein the modulator is mounted tiltably (col. 3 lines 56-63) and wherein at least a portion of the at least one layer modifying the phase or amplitude is transmissive (Fig. 1).

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Wilson further discloses the use of retardation plates (col. 3 lines 18-19) used in combination with polarization modulation. Wilson further discloses a carrier (col. 3 lines 55-63) introduducible into the beam path of the microscope and selectably mounted (col. 3 lines 55-63) tiltably mounted. Wilson further discloses the use of a pattern of modulators on the mask (col. 3 lines 26-27), which the examiner interprets as various modulators.

Regarding claim 2, Wilson discloses at least one layer of the modulator is configured in such a way that the greatest possible phase shift is already achieved by a slight tilt (col. 3 lines 56-58).

Regarding claims 8 and 9, Wilson discloses the modulator defines a variable layer configuration (col. 3 lines 25-55). The pattern of modulators on the modulating element (6) is a variable layer configuration because the modulation of the incident light varies at different locations on the element.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claims 3 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wilson (US 6,687,052) in view of Kobayashi (US 6,057,894).

Regarding claim 3, Wilson teaches the invention as claimed but lacks reference to the use of a glass layer. Kobayashi teaches the use of a glass layer coupled to a modulator (col. 6 lines 4-25) for the purpose of supporting the modulating layer in a high heat environment. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have the Wilson invention include the glass layer of Kobayashi for the purpose of supporting the modulating layer in a heated environment, where the heat originates from the LEDs (1 and 8) of the Wilson invention.

Regarding claim 10, Wilson teaches the modulator defines a variable layer configuration (col. 3 lines 25-55). The pattern of modulators on the modulating element (6) is a variable layer configuration because the modulation of the incident light varies at different locations on the element.

Response to Arguments

Applicant's arguments, see Pre-Brief Conference Request, filed September 1, 2005, with respect to the rejection(s) of claim(s) 1 and 11-13 under Hoffman in view of Wolleschensky have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Wilson (US 6,687,052).

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The applicant argued that the motivation for combination must arise from within the combined references. The examiner has modified the rejection to clarify the rejection. The examiner notes that the applicant argues that the use of a modulator with several different modulating regions does not meet the claim limitations of various modulators. As stated in the rejection above the use of a patterned modulating element meets the claim limitations of, "various modulators." If the applicant wishes to clarify the limitation to include only modulators in sequence, the examiner suggests the use of a term such as, "subsequent" or "in sequence." The rejection is based upon amended claim limitations filed April 21, 2005 and therefore the rejection is made final because the change in the rejection was necessitated by the amendment to the claim limitations.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

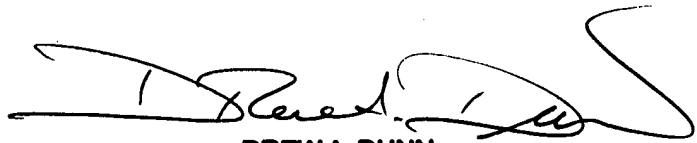
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joshua L. Pritchett whose telephone number is 571-272-2318.

The examiner can normally be reached on Monday - Friday 7:00 - 3:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Drew A. Dunn can be reached on 571-272-2312. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JLP *JP*


DREW A. DUNN
SUPERVISORY PATENT EXAMINER